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an established business during a specified time where there is the implied agreement that the buyer will purchase all the articles needed of the person whose offer he has accepted. *Wells v. Alexander*, 130 N. Y. 642; *Lumber Co. v. Coal Co.*, 31 L. R. A. 529.

CONTROVERSY BETWEEN STATES—JURISDICTION—DIVERSION OF WATER.—*Kansas v. Colorado*, 22 Sup. Ct. Rep. 552.—*Held*, the Supreme Court of the United States has original jurisdiction of a controversy between States. The question raised in this case was whether Colorado had the right to wholly deprive Kansas of the benefit of the water of the Arkansas river, which rises in Colorado and flows into and through Kansas.

This case brings to mind the many attempts which have been made to organize tribunals having cognizance of disputes between sovereign states, all of which have failed through lack of power to enforce the decrees. The States of the Union are sovereignties, and under the rules of international law might settle disputes by treaty or an appeal to force, had not these attributes of sovereignty been surrendered to the general government. In *Rhode Island v. Massachusetts*, 12 Pet. 726, 9 L. Ed. 1261, it was held that a complaining State being bound by the prohibitions of the constitution to neither treat, agree or fight with its adversary, without the consent of Congress, a resort to the judicial power was the only means left for legally adjusting a dispute between States relating to a controverted boundary. Colorado claimed also that Kansas was seeking to maintain this action for the redress of supposed wrongs of certain private citizens of that State, and that it was not empowered to bring an action in this court for such purpose. The court however, followed the case of *Missouri v. Illinois*, 180 U. S. 208, 21 Sup. Ct. Rep. 331, where it was ruled that the mere fact that a state had no pecuniary interest in the controversy would not defeat the jurisdiction of this court. It might be invoked by the State as *parens patriae*, trustee, guardian, or representative of all or of a considerable portion of its citizens.

DAMAGES—NERVOUS PROSTRATION RESULTING FROM FRIGHT—TRESPASS AS PROXIMATE CAUSE—RIGHT OF RECOVERY.—*Watson v. Dilts*, 89 N. W. 1068 (Iowa).—Defendant wrongfully entered plaintiff's house in night time, thereby frightening plaintiff, a woman, and causing nervous prostration and physical disability. *Held*, to constitute a good cause of action.

The decisions are practically unanimous that fright alone, caused by an act of negligence, is not ground for damages; *Victorian R. Com'r's v. Coulter*, L. R. 13 App. Cases 222; *Mitchell v. Rochester R. R. Co.*, 151 N. Y. 107; nor, by weight of authority, does consequent physical disability affect the legal status of complainant; *Ewing v. Pittsburg R. R. Co.*, 147 Pa. 40, 14 L. R. A. 66 and note; although the justice of this conclusion is denied by text writers. *Watson, Personal Injuries*, secs. 396-402; *Sedgwick, Damages*, 8th ed., secs. 46, 47, 861; *Beaven, Negligence*, sec. 77 *et seq.* Many of the courts base their decision on the rule of convenience. *Spade v. Lynn R. R. Co.*, 168 Mass. 285. The same position—*ab convenienti*—is taken by the courts in regard to mental anguish in the so-called “telegraph” cases. *W. U. Tel. Co. v. Ferguson*, 157 Ind. 64. Other courts emphasize the absence of proximate cause. *Braun v. Craven*, 175 Ill. 40. In the principal case, the court, while recognizing the attitude of the law, lays weight upon the wilful trespass as a proximate cause to justify its conclusion. Although

complainant's claim admittedly is stronger than where negligence is the moving cause, yet even then the law can hardly be said to be in harmony with this decision. In an early English case, evidence was admitted of fright of plaintiff's wife to show the outrageous and violent character of the trespass, but not as a substantive ground of damage. *Huxley v. Berg*, 1 Starkie 98 (1815). See also *Canning v. Williamstown*, 1 Cush. 451 (1848); and the doctrine of these early cases has generally been followed. But in support of the principal case, see *Hill v. Kimbell*, 76 Tex. 210; *Purcell v. Railway Co.*, 48 Minn. 134; *Bell v. Railway Co.*, 26 L. R. Ire. 432.

EVIDENCE—INSTRUCTIONS—EXPERT TESTIMONY.—*GUSTAFSON v. SEATTLE TRACTION CO.*, 68 Pac. 271 (Wash.).—*Held*, that an instruction to a jury that they treat and weigh with "caution," that part of the testimony of an expert witness as to his opinion and consider it with reference to the facts upon which his opinion was formed, was erroneous, as discrediting the testimony of the expert.

Great confusion is evident as to proper instructions regarding the value and competency of expert testimony. That the court may draw a distinction, in its charge, between fact and opinion, see *People v. Montgomery*, 13 Abb. Pr. 207. That a court may express its own opinion on the facts without being exposed to reversal, is the decision of both the English and U. S. Federal courts. *Lovejoy v. U. S.*, 128 U. S. 171; *Rogers' Expert Test.*, 445. The weight of authority seems to be that to charge a jury to weigh evidence with "caution" or even "great caution" is not error. *People v. Perriman*, 40 N. W. 425; *Moyle v. Herndon*, 30 Miss. 18; *Benedict v. Flanigan*, 18 S. W. 506. The principal decision, however, is well supported. *People v. Seaman*, 65 N. W. 203.

EXEMPTIONS—REAL ESTATE PURCHASED WITH PENSION MONEY.—*MCINTOSH v. AUBREY*, 22 Sup. Ct. Rep. 561.—U. S. Rev. Statutes, Sec. 4747 declares that no money due or to become due to any pensioner shall be liable to attachment, levy or seizure, but shall inure wholly to the benefit of such pensioner. Held, that real estate purchased by a pensioner with pension money is not exempt.

In *Crow v. Brown*, 81 Iowa 344, 11 L. R. A. 110, this statute was given a very different construction. There it was held that if force and effect are to be given to the clause "inure wholly to the benefit of the pensioner," there is no escape from the conclusion that property purchased with pension money is exempt. *Yates County National Bank v. Carpenter*, 119 N. Y. 550, 7 L. R. A. 557 holds that if receipts from a pension can be directly traced to the purchase of property necessary or convenient for the support and maintenance of the pensioner and his family such property is exempt from execution. That statutes of this kind are to be liberally construed, and that their force and effect are not to be confined to the literal terms of the Act has been held in numerous cases. The Supreme Court, however, construes the words of the statute strictly, holding that the protection provided protects the fund only while in the course of transmission to the pensioner. It is protected only when "due or to become due." When the money has been paid to him, it has "inured wholly to his benefit" and is liable to seizure.